IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Civil First Appeal No.44/1989.
(Kanhaiya Lal Vs. Sarju Prasad & Others)

DATE OF JUDGMENT : July 11th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. K.N. Joshi with
Mr. Manoj Bohra, for the appellant.
Mr. B.K. Bhatnagar, for the respondents.

BY THE COURT :

Reportable

This regular first appeal has been filed by the appellant Kanhaiyalal s/o Amichand challenging the judgment and decree dated 28.11.1988 passed by the learned District Judge, Sirohi in Civil Original Case No.170/1984 by which the learned trial Court passed decree for Rs.7,325/- with interest against the appellant.

According to facts of the case, it is disclosed in the memo of appeal that house of the appellant is situated at Sirohi which was rented to the respondents by the father of the appellant. The respondents vacated the said house on 21.04.1978 and possession of the same was given to the appellant. According to

the appellant, the appellant and respondents are relatives and after giving possession on 21.04.1978, in between 22.04.1978 to 26.05.1978, the respondents re-entered in the house of the appellant in his absence and as such a criminal complaint was lodged by the appellant in which ultimately final report was given. Upon filing of a protest petition by the appellant in the Court of Magistrate, cognizance was taken by the Magistrate and respondents were summoned and released on bail and, after trial, they were acquitted vide judgment dated 25.02.1982 by the Chief Judl. Magistrate, Sirohi on the ground that the complainant-appellant failed to prove his case.

After acquittal the respondents filed a suit against the appellant in the Court of District Judge, claiming damages for malicious prosecution. In the suit filed by the respondents before the trial Court, primarily, it was contended that due to false case plaintiffs suffered irreparable injury to their prestige and suffered financial losses during the trial, therefore, it was prayed that compensation of Rs.26,251/- may be ordered to be paid by the appellant to the respondents.

In the suit filed by the respondents, the appellant filed written-statement and refuted the allegations levelled against him. The trial Court framed the following issues for

adjudication :

> "1. Whether the defendant lodged the report in police and filed complaint in the court of Chief Judicial Magistrate with malice and without reasonable and probable cause ?
>
> 2. Whether the plaintiffs are entitled to Rs.25,000/- as general damages ?
>
> 3. Whether the plaintiffs are entitled to expenses of Rs.1251/- as detailed in para No.11 of the plaint ?"

The plaintiff respondents produced 6 witnesses namely P.W.-1 Saraju Prasad, P.W.-2 Smt. Sita, P.W.-3 Phool Chand, P.W.-4 Shankar Lal, P.W.-5 Hansraj Purohit and P.W.-6 Chaturbhuj Kalawant. In defence, 2 witnesses viz., D.W.-1 Kanhaiya Lal, appellant examined himself and statement of D.W.-2 Mohan Singh was recorded by the trial Court. After providing opportunity to both the parties for evidence, the learned trial Court proceeded to decide the issues.

The learned trial Court decided issue No.1 in favour of plaintiff-respondents and held that complaint which was filed by the appellant was false and issue No.2 was also decided in favour of the plaintiff-respondents and Rs.5,000/- by way of general damages was decreed. Issue No.3 was also decided in favour of the plaintiff-respondents under which a sum of Rs.2,325/- was held payable to the plaintiffs by the defendant.

In all, a sum of Rs.7,325/- was decreed by the trial Court against the appellant in favour of the plaintiff-respondents alongwith 6% p.a. interest from the date of filing suit till the date of recovery.

It is argued by learned counsel for the appellant that the suit itself was not maintainable as it was filed after the period of limitation because the final report was given on 01.08.1978 and the criminal case was filed on 01.07.1978 whereas the suit was filed in the year 1983. It is contended that the approach of the trial Court is incorrect and against the settled principles of law. According to him, the decree passed by the trial Court is based on falsehood and truthfulness of the allegations which is against settled principles of law.

It is vehemently contended by learned counsel for the appellant that whether the prosecution was initiated without any reasonable cause and with malicious intention is not proved by evidence and acquittal of the respondents in the criminal case by itself is not proof of malicious and frivolous prosecution. It is further submitted that according to evidence on record it is established that the respondents once vacated the house were residing in the house of Madho Singh and the appellant was residing in his house. The luggage was shifted through transport authorities and, therefore, disbelieving the statements of Mohan

Singh and documents produced was totally wrong.

It is also contended that as per the judgment Ex.-4 it is nowhere held that the criminal case was false and accused are hereby acquitted. The only finding was given by the criminal Court in the criminal case that the prosecution has failed to prove its case. Therefore, from over-all scrutiny of the entire evidence, it cannot be said that the prosecution was malicious and without any cause. It is contended by learned counsel for the appellant that the trial Court has committed serious error of law while decreeing the plaintiff's suit for damages on the basis of erroneous finding.

I have perused the entire record of the case and statements as well as finding of the learned trial Court. It is not disputed before me that complaint was filed by the appellant in which the police after investigation gave final report but upon protest petition, the learned Chief Judicial Magistrate, Sirohi took cognizance after recoding statement under Section 200 and 202 Cr.P.C. and the respondents were prosecuted by the trial Court for offences under Sections 457, I.P.C. Upon careful examination of the finding arrived at by the trial Court it is clear that the trial court has decided the facts of the case with regard to vacating or not vacating the house by the respondents. This

discussion is totally erroneous because the learned trial court was under obligation to adjudicate whether due to prosecution launched by the prosecution any damages to the prestige was suffered by the respondents because the suit was filed for recovery of Rs.26,251/- for malicious prosecution. But upon perusal of the finding on issue No.1 it is clear that the learned trial Judge has held that in between 22.4.1978 to 26.5.1978, the plaintiffs did not enter into the house which was said to be vacated by them. It may be a finding for the purpose of possession but how on the basis of such finding it can be said that due to prospection launched by the appellant, the plaintiffs suffered damage to prestige and are therefore, entitled for damages.

It is settled law that of course in the criminal case a finding is given by the criminal court that the prosecution itself was false and accused were implicated falsely and they are entitled to clear-cut acquittal, then, only when the criminal court has reached conclusion after appreciation of the evidence with regard to malicious prosecution aimed at harassing and injuring reputation, it can be said that any compensation is required to be paid; but, on the perusal of the finding of the criminal court it is nowhere concluded by the trial court that the prosecution case

itself was false and harassment has been caused to the accused party with an intention to do so. If the criminal Court has not concluded so, it is not open to the civil court to re-assess the judgment of the criminal court and give a finding upon that for the purpose of passing order for damages. In these circumstances, the finding of the trial Court with regard to false criminal case is contrary to law and deserves to be set aside.

It may be observed that once the finding of the trial Court on this material question loses ground then, in that case, the other issues whereby compensation on various counts has been quantified cannot be sustained. In the circumstances, in my opinion, the learned trial Court has committed error while holding that respondents are entitled to compensation for facing criminal trial. If any false criminal proceedings is initiated the criminal Court can, of course, take action against the complainant after recording the conclusion; but, in this case, this is not so and the criminal Court has reached conclusion after the trial that the prosecution has not proved its case. No such conclusion was arrived at by the criminal Court that the complaint was false. It is not seldom that upon insufficiency of evidence the prosecution fails to establish the guilt but by itself it cannot be held that the allegation is false. That is entirely

different to hold. Consequently, the finding of the trial Court on issue No.1 is set aside. As a result, the findings of the trial Court on other issues cannot be sustained and are hereby quashed.

The appeal succeeds and is hereby allowed. The impugned judgment and decree is set aside.

(Gopal Krishan Vyas) J.